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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a Special meeting on June 26, 2001, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

Tom Flesh, President of the Board, called the Special meeting to order at 8:30 a.m.

Present:	Edward Bayuk	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Robin P. Parker
	Frederick E. (Fritz) Hitchcock	Staff Counsel
	Alan J. Skobin	Michael Dingwell
	Solon C. Soteras	Staff Counsel
	Glenn E. Stevens	

Absent: David W. Wilson

Mr. Flesh welcomed Vera Kawamura, Chief Counsel for the Department of Motor Vehicles. Ms. Kawamura introduced herself and answered questions posed by the audience and Board members.

3. **CONSIDERATION OF DECISION IN LIGHT OF JUDGEMENT DENYING THE PETITION FOR PEREMPTORY WRIT OF MANDATE**

SABA A. SABA, SBD PARTNERS, INC. and HONDA KAWASAKI SPORTCENTER
vs. KAWASAKI MOTORS CORP., U.S.A.
Protest No. PR-1633-98

Consideration of the Decision in light of the Superior Court's Judgement denying the Petition for Peremptory Writ of Mandate wherein the Court Ordered the Board to vacate the Proposed Decision of Administrative Law Judge Marilyn Wong, dated May 17, 1999, and accept and

issue, as the Final Decision of the Board its August 12, 1999, Decision, in the above-entitled protest, by the Public members of the Board.

Mr. Soteras moved to reinstate the Board's August 12, 1999, Decision. Mr. Stevens seconded the motion. The motion carried unanimously.

4. **CONSIDERATION OF PROPOSED RULEMAKING IMPLEMENTING AMENDMENTS TO SUBDIVISION (O) OF VEHICLE CODE SECTION 11713.3 [SECTION 565 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS]**

The members were provided with a memorandum from Tom Novi and Michael Dingwell concerning proposed revisions to Section 565 of Title 13 of the California Code of Regulations. This matter was originally considered at the November 28, 2000, General meeting, wherein the members approved the original proposed text. At the June 12, 2001, General meeting, Tom Flesh, instructed staff to work with the Policy and Procedure Committee to draft proposed revisions to the text prior to noticing the proposed regulatory changes with the Office of Administrative Law.

The members considered the following proposed revisions:

- When a manufacturer, branch, or distributor ("manufacturer") seeks to request an extension of time, it shall first give notice in writing of that intention to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area.
- The written request for an extension of time shall be accompanied by a statement of facts detailing the specific need for the extension of time; the requested expiration date of the extension; a chronology of the actions both taken and planned by the manufacturer to prepare for the sale of the franchise to a successor independent franchisee; and, if there are no franchisees operating a dealership of the same line-make within the relevant market area, the request shall contain a statement to that effect.
- In determining whether good cause exists to grant the request, the Board shall take into consideration the existing circumstances, the written request, and written responses received from any dealership of the same line-make within the relevant market area.
- The ability to object to the request and the authority to consider the granting of the request shall be limited to Public Board members. The Dealer members shall be excluded.

After a lengthy discussion, the members requested that staff make additional changes to the

proposed text for consideration after the Closed Executive Session.

5. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), the Board shall convene in a closed Executive Session.

Oral interviews of the General Counsel candidates, by all members of the Board

The members of the Board convened in closed Executive Session for purposes of interviewing the General Counsel candidates. A nominee was selected by the members. Once the nominee is approved by Steven Gourley, Director, Department of Motor Vehicles, Maria Contreras-Sweet, Secretary, Business, Transportation & Housing Agency, and the Governor's Legal Affairs Office, the nominee selected will be ratified by the Board members at a subsequent meeting and the candidate selected will be announced in Public Session.

6. **OPEN SESSION**

After the conclusion of closed Executive Session, the members went back into Open Session.

4. **CONSIDERATION OF PROPOSED RULEMAKING IMPLEMENTING AMENDMENTS TO SUBDIVISION (O) OF VEHICLE CODE SECTION 11713.3 [SECTION 565 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS]**

The members were provided with another revised version of the proposed text of the regulation. These revisions provided as follows:

- The written request for an extension of time shall be accompanied by a list of all franchisees operating a dealership of the same line-make within the relevant market area and a statement to the effect that the information required with the request for extension has been provided to each franchisee operating a dealership of the same line-make within the relevant market area.
- Upon receipt of a request for an extension of time, the Board shall notify each franchisee of the same line-make within the relevant market area that a timely request has been received, and that the franchisee has the opportunity to send an opposition letter to the Board and have that opposition considered at the next Board meeting.
- In determining whether good cause exists to grant the request, the Board shall also take into consideration comments of other interested parties.

- The ability to object to the request and the authority to consider the granting of the request shall be limited to Public Board members only, unless the requesting party to the proceeding requests Dealer Board member participation.

The members offered additional revisions and requested that staff in consultation with Messrs. Stevens and Skobin reorganized the paragraphs of the proposed text. Mr. Soteras moved to adopt the proposed text as modified with corrections and renumbered. Mr. Skobin seconded the motion. The motion carried unanimously.

In compliance with the Administrative Procedure Act, Mr. Flesh read the following statement into the record:

Given the Board's decision to go forward with the proposed rulemaking, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices will be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed rulemaking, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed rulemaking. Furthermore, if the staff decides that modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

The revised text as adopted by the Board is as follows:

§ 565. Request for Extension of Time; Temporary Ownership or Operation of a Dealership by a Manufacturer, Branch, or Distributor.

(a) After a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to own and operate a dealership within the relevant market area of an independent dealer of the same line-make in preparation for sale to a successor independent franchisee, the board may extend the time period beyond one year.

(b) When a manufacturer, branch, or distributor seeks to request an extension of time, it shall first give notice in writing of that intention to the board and to each franchisee operating a dealership of the same line-make within the

relevant market area.

(c) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

“NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.”

(d) When a request for extension of time has been received, the board shall notify each franchisee of the same line-make within the relevant market area, as provided by the manufacturer pursuant to subsection (g)(1) below, that a timely request has been received, that the franchisee has the opportunity to send a letter to the board opposing the request and have that opposition considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the request for extension.

(e) In determining whether good cause has been shown for granting the request for an extension of time, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (1) The written request of the manufacturer, branch, or distributor;
- (2) Written responses in opposition to the request received from any franchisee operating a dealership of the same line-make within the relevant market area; and,
- (3) Comments of other interested parties.

(f) Upon the filing of a timely request for an extension of time, a copy of the request for extension shall be transmitted by the secretary of the board to each member of the board for consideration.

(g) The written request for an extension of time shall be accompanied by all of the following:

- (1) A list of all franchisees operating a dealership of the same line-make within the relevant market area.
- (2) A statement of facts detailing the specific need for the extension of time.
- (3) The requested expiration date of the extension.
- (4) A chronology of the actions both taken and planned by the manufacturer, branch, or distributor to prepare for the sale of the franchise to a successor independent franchisee.
- (5) A statement to the effect that the information required in subsections (g)(2)-(4) above has been provided to each franchisee operating a dealership of the same line-make within the relevant market area.

(6) A statement that the requesting party does or does not agree that the dealer members of the board may participate in the consideration of the request.

(h) Unless, within 30 days of receipt of a copy of the request for extension, any member of the board notifies the secretary of an objection, and the board has received no written responses in opposition to the request from any franchisee operating a dealership of the same line-make in the relevant market area, the secretary shall grant the extension.

(i) If any member of the board gives notice of objection within 30 days of receipt of a copy of the request for extension, or if the board receives a timely written opposition to the request from any franchisee operating a dealership of the same line-make within the relevant market area, this matter shall be considered by the board at its next scheduled meeting.

(j) Upon receipt by the secretary of a notice of objection and/or a written opposition from any franchisee operating a dealership of the same line-make within the relevant market area, the secretary shall notify the manufacturer, branch, or distributor that there has been an objection and/or opposition, that the matter will be considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the request for extension. The manufacturer, branch, or distributor, and opposing franchisee(s), if any, operating a dealership of the same line-make within the relevant market area shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the request for extension will be considered.

(k) Notwithstanding subsections (h), (i) and (j) above, a member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter involving a request subject to this subsection, unless the requesting party to the proceeding agrees otherwise.

(l) Sixty days prior to the expiration of the one year period, the manufacturer, branch, or distributor shall request in writing an extension of time for good cause shown. Requests received with less than sixty days prior notice will not be considered by the board and shall be deemed denied.

(m) Within 20 days of receiving the notice, any franchisee required to be given notice may file an opposition to the request for an extension of time.

7. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 5:00 p.m.

Submitted by

Signature on file

TOM NOVI
Executive Director

Signature on file

APPROVED: _____

Robert T. (Tom) Flesh
President
New Motor Vehicle Board